

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION, et al.,

Plaintiffs,

vs.

EQUITYBUILD, INC.,  
EQUITYBUILD FINANCE, L.L.C.,  
JEROME H. COHEN, SHAUN D. COHEN,  
and CITIBANK, N.A., as Trustee,

Defendants.

No. 18 C 5587

Chicago, Illinois  
November 16, 2023  
11:06 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS -  
Status Hearing  
BEFORE THE HONORABLE MANISH S. SHAH

APPEARANCES:

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COMMISSION  
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10 For the Receiver: RACHLIS DUFF & PEEL, L.L.C.  
11 BY: MR. MICHAEL RACHLIS  
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15 Also Present (by phone): MS. SUSAN KALISIAK,  
16 an unrepresented claimant  
17  
18  
19  
20  
21

22 COLLEEN M. CONWAY, CSR, RMR, CRR  
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1 (Proceedings available by phone/heard in open court:)

2 THE CLERK: 18 CR 5587, United States Securities And  
3 Exchange Commission versus EquityBuild.

4 THE COURT: Good morning, everyone.

5 We've made note of counsel's appearances, and so we  
6 won't take attendance on the record this moment. But we have a  
7 record of everyone who is appearing.

8 My agenda this morning is to talk about the Group 3  
9 distribution order, Group 2 issues, and wrapping up discovery  
10 with respect to Group 2, if necessary.

11 Then the framing reports for Groups 4 and 5. The  
12 receiver's twenty-first fee application. The status of any  
13 appeals and any settlement efforts with FHFA.

14 Then I'll open it up for other issues that people  
15 want to raise. There are a few -- at least two unrepresented  
16 claimants who wanted to be heard this morning, and we'll give  
17 an opportunity for them to be heard at the end. And then I'll  
18 go around the room one final time to see if there are any other  
19 issues people want to raise.

20 So let me just barrel ahead.

21 On Group 3, I have the proposed distribution order.  
22 As I am reviewing it, it, in a sense, is anticipating approval  
23 of the twenty-first fee application as it relates to the Group  
24 3 properties because there is no history of any objections to  
25 the fee allocations under Group 3. And it also releases

1 anything that had previously been held back from earlier fee  
2 applications as it relates to Group 3.

3 That is all appropriate in my view. I think Group 3  
4 is a group that has resolved all of the issues that it  
5 presented, and it's now ready for distribution. All of the  
6 objections have been resolved.

7 I don't see anything that suggests to me that any  
8 error or unreasonable allocation has been made by the receiver  
9 with respect to the Group 3 that would justify the continued  
10 20% holdback as it relates to Group 3.

11 So it's my intention to approve that order and get it  
12 entered. One question I have is, is this actually the first  
13 time that money will be going out to claimants in this case?

14 (Counsel nod.)

15 MR. RACHLIS: Well, not exactly. There were others  
16 that were resolved pursuant to, you know, settlement or other  
17 resolution, so -- but in terms of, like, looking at a whole  
18 group, the answer is yes.

19 THE COURT: It is a long time coming, but I think it  
20 is a sign of all of the time and effort and work in building  
21 these processes, finally coming to some fruition. So I think  
22 it is a positive development in the history of the receivership  
23 that we can close out a group.

24 And so I will -- the proposed order had been attached  
25 to the notice, but I don't think I received it electronically

1 yet.

2 MR. RACHLIS: Your Honor, in looking at the order,  
3 there may be one issue that was spotted associated with  
4 holdbacks. And so if we could submit that to Your Honor this  
5 afternoon for purposes of entry, that would be great.

6 THE COURT: That's fine.

7 MS. WINE: Thank you.

8 THE COURT: Group 2. As I have read the filings,  
9 only Shatar, S-h-a-t-a-r, and Direct Lending are the only  
10 claimants at issue with respect to the argument for avoiding  
11 fraudulent transfers and the only claimants seeking discovery.  
12 But any discovery that those claimants are seeking is related  
13 to the fraudulent transfer avoidance issue.

14 Let me ask -- first, I'll start with the receiver.  
15 Is that your sense of the lay of the land with Group 2?

16 MR. RACHLIS: Yes.

17 THE COURT: Do we have counsel for Direct Lending  
18 here?

19 (Counsel approaches.)

20 MR. HACKNEY: Good morning, Your Honor. William  
21 Hackney on behalf of Direct Lending Partner.

22 THE COURT: Do I have the lay of the land correct  
23 from your perspective?

24 MR. HACKNEY: You do, Your Honor.

25 THE COURT: And do we have counsel for Shatar?

1           MR. CHERNY: Good morning, Your Honor. Bill Cherny  
2 on behalf of Shatar.

3           THE COURT: And also, you concur with that -- that's  
4 the posture with respect to your claim?

5           It's limited -- your issue for discovery is related  
6 to the fraudulent transfer issues.

7           MR. CHERNY: That's correct, Your Honor.

8           THE COURT: And, Mr. Hackney, why don't you stay up  
9 at the lectern.

10           The receiver points out that that may not be  
11 necessary depending on how I resolve the priority issues.

12           And when we did Group 1, that is how it shook out. I  
13 don't know how it will shake out with respect to Group 2. But  
14 it seems to me that it's in everyone's interest to not spend  
15 time and money on issues until we absolutely are certain that  
16 we need to spend time and money on those issues, particularly  
17 the receiver's time, because we are all paying for the  
18 receiver's time.

19           And so I tend to think it's a good idea to not press  
20 forward on the fraudulent transfer debates until we know for  
21 sure that we need to.

22           I am not so concerned that there is some loss of  
23 information or witnesses or something that means we need to do  
24 this discovery now as opposed to seeing if we really need to.

25           So let me get your views on that. Mr. Hackney?

1 MR. HACKNEY: I think that's correct, Your Honor.  
2 We're fine with that.

3 We just wanted to make sure we filed something by the  
4 dates that have been established, especially with the  
5 potential, I believe, position papers which are due at the end  
6 of November. Again, we just wanted to make sure we have  
7 something on file.

8 So if that's what the Court prefers, Direct Lending  
9 is fine with that as well.

10 THE COURT: Mr. Cherny?

11 MR. CHERNY: I am fine with that as well, Your Honor.

12 THE COURT: So I am -- I'll just enter and continue  
13 the motions for further discovery. They don't need to be  
14 briefed now, or we don't need to address whether there will be  
15 any further discovery until I resolve the Group 2 issues, the  
16 priority issues, which will be fully briefed by January 20th.

17 Do I have that schedule right?

18 MR. RACHLIS: Actually, I think it's January 10th, I  
19 thought, Your Honor.

20 Oh, we have -- my recollection is that position  
21 statements from claimants and the SEC, if any are going to be  
22 filed, are due November 29th. The receiver will submit his  
23 position statement on December 20th. And then January 10th  
24 would be the last -- called a reply, if you will, to that  
25 before Your Honor on the current schedule.



1           THE COURT: Okay. That's fine. I don't see any  
2       reason to change that schedule, so we'll keep that in place.  
3       And that will then fully brief the priority disputes as to  
4       Group 2. I will appreciate everyone's patience as I then take  
5       those fully-briefed issues and will resolve them when I can.

6           And then if that means that we have to get to  
7       fraudulent conveyances, we will reconvene and we'll talk about  
8       how to most cost-effectively and efficiently get to the bottom  
9       of any factual disputes.

10          The goal here has always been to be as abbreviated as  
11       possible and accept the fact that information about what really  
12       happened in some of these transactions is going to be bereft of  
13       detail. And we're going to have to live with that as a  
14       balancing of getting to the bottom as best we can of what  
15       happened, getting distributions done.

16          But perfect information is just not going to be an  
17       option when I balance all of that. But we'll talk about what  
18       the claimants feel is necessary and appropriate when we get to  
19       it.

20          MR. HACKNEY: Okay, Your Honor.

21          MR. CHERNY: Thank you.

22          THE COURT: Thank you.

23          MR. HACKNEY: Thank you.

24       (Counsel returns.)

25          THE COURT: The framing report for Groups 4 and 5.

1           The proposal would be to commence the informal  
2       discovery period by the end of this month. That will take us  
3       into February. And then a round of briefing, much like we've  
4       done with Groups 1 and 2. That puts -- the proposal would be  
5       to put that out, with the briefs being completed, by the end of  
6       February 2024 for both of those groups.

7           Let me -- I guess I'll ask, are there represented  
8       parties with claims on Groups 4 and 5 that have any issue with  
9       that proposed schedule?

10          MR. NATARELLI: Your Honor, this is Brett Natarelli  
11       on behalf of the institutional lenders in Group 5.

12          We were going to request just moving the February 8th  
13       proposed date, which is the deadline for requesting additional  
14       discovery, to extend that to February 15.

15          That shouldn't change any of the other dates or  
16       otherwise delay the schedule. But just because there's  
17       informal discovery as opposed to a full-blown time period,  
18       having a little more time to take stock of any avoidance filing  
19       by the receiver would be appreciated.

20          MR. STEIN: And, Your Honor, Max Stein on behalf of  
21       certain individual investors.

22          We actually independently had the same idea, so  
23       support that suggestion.

24          THE COURT: With respect to Group 5 or Group 4?

25          MR. STEIN: I have claimants in both, but I'm

1 speaking now for Group 5 where there are institutional lenders.  
2 My understanding is for Group 4, it's more like Group  
3 3.

4 THE COURT: Very good.

5 And I don't -- does the receiver have any issue with  
6 giving them, those claimants, a little additional time to  
7 decide whether they're going to need additional discovery or  
8 not?

9 MR. RACHLIS: No, Your Honor.

10 THE COURT: So for Group 5, then, that deadline will  
11 be moved from February 8 to February 15.

12 As you sit here today, on behalf of the receiver in  
13 Groups -- let's start with Group 4, are you anticipating  
14 fraudulent transfer issues?

15 MR. RACHLIS: Without prejudicing our ability to  
16 raise that issue later, I believe the answer is no.

17 THE COURT: And is it your prediction that Group 4 is  
18 more like Group 3 than the others?

19 MR. RACHLIS: Yes.

20 THE COURT: And then Group 5, more like Group 2?

21 MR. RACHLIS: Group 5 may be more like Group 2.

22 THE COURT: Okay. Well, I will adopt, with that one  
23 modification, the order regarding summary proceedings for  
24 Groups 4 and 5.

25 Then let me -- let's talk about the receiver's

1 twenty-first fee application.

2 Has the SEC had an opportunity to review the  
3 twenty-first fee application by the receiver?

4 MR. HANAUER: Yes, Your Honor.

5 The SEC has reviewed the application, reviewed the  
6 bills. The SEC approves the application and the bills. And I  
7 can confirm that the application substantially comports with  
8 our billing guidelines.

9 THE COURT: Then I won't ask the SEC to file any  
10 position statement or a response on the receiver's twenty-first  
11 fee application.

12 We should set a deadline for objections. Has there  
13 been any conference about a schedule for that?

14 I guess I'll start with the receiver to see if  
15 there's been communication about it.

16 MR. RACHLIS: Not that I'm aware of, Your Honor.

17 THE COURT: On behalf of the institutional lenders,  
18 do you want a deadline to file something?

19 MR. NATARELLI: Yes, Your Honor. We were going to  
20 request December 8th.

21 THE COURT: That's fine. December 8th for any  
22 objections to the receiver's twenty-first fee application.

23 As you sit here, do you think it's going to be  
24 similar to the other briefs on the issue of the receiver's  
25 fees?

1           And I am asking only to decide whether I ought to set  
2           a reply deadline for the receiver. Or if it's going to be a  
3           lot of similar issues, then maybe I don't need a reply. But I  
4           want to give you the opportunity to preserve your position and  
5           objections.

6           I don't know if you have had enough time to look at  
7           all of the line items yet.

8           MR. NATARELLI: No, Your Honor. I -- sitting here, I  
9           don't know that there will be new categories. But there  
10          usually are one or two issues that are distinct or different in  
11          some way, understanding there are often similarities as well,  
12          so -- but I just don't know yet.

13          THE COURT: I am going to hold off on a reply from  
14          the receiver. Let me take a look at the objections. And if I  
15          think I need a reply, I'll let you know.

16          MR. RACHLIS: All right. That's fine, Your Honor.

17          THE COURT: Again, all in an effort to save expenses  
18          here. I am really trying to not have the receiver's fees  
19          increasing because the receiver is litigating fees.

20          So I will go through the spreadsheets and I will go  
21          through the objections, and I will decide if I need a reply or  
22          not.

23          Okay. So then any status on pending appeals that can  
24          be reported to me?

25          MR. RACHLIS: Yes.

1 THE COURT: I'll turn to the receiver for that.

2 MR. RACHLIS: Yes, Your Honor.

3 In the pending appeal associated with Group 1 --  
4 23-1870 is that appeal number -- an oral argument date has been  
5 set by the Seventh Circuit just a few days ago, which is  
6 January 22nd at 9:30.

7 THE COURT: And then on the other appeal?

8 MR. RACHLIS: On the FHFA side, there has been --  
9 pursuant to discussions among the parties, that Your Honor is  
10 aware that those have been ongoing, those have been making some  
11 significant progress.

12 There was a joint motion filed on those appeals, to  
13 stay them while the parties continue to work towards a possible  
14 recommendation to the Court for resolution on those  
15 FHFA-related properties.

16 THE COURT: Thank you for that update.

17 Then I am not going to ask any more about the  
18 settlement front on the FHFA properties. It sounds like that's  
19 in your hands, and I don't need to get any more information  
20 about that than what you've already told me. And if you need  
21 my assistance, you know how to find me, and you can --

22 MR. RACHLIS: I think, Your Honor, that's fine. We  
23 may need -- I think it's very positive. I think likely.

24 We are making progress, but we will definitely --  
25 there's a good possibility we may need and want to be in front

1 of Your Honor to continue one of those off-the-record  
2 settlement discussions.

3 So it's good that -- I appreciate the invitation,  
4 because we might take you up on it, basically.

5 THE COURT: That's fine. That's what I am here for.

6 Let me now -- let me just ask the receiver, are there  
7 any other issues or updates you want to give me this morning?

8 MR. RACHLIS: I don't believe so, but let me check  
9 with others to --

10 (Counsel conferring.)

11 MR. RACHLIS: So there is one update in regards to  
12 what is a property in Group 6, and that is property No. 107  
13 where there has been an agreement reached among various parties  
14 associated with -- various claimants in that regard.

15 So there will be some filing associated with that. I  
16 don't know -- I won't say imminent but soon in regards to that  
17 one property.

18 THE COURT: Thank you.

19 Mr. Marcus had asked for an opportunity to be heard,  
20 and Ms. Kalisiak asked for an opportunity to be heard. We  
21 endeavored to make arrangements for them to appear by phone.  
22 We've been unable to get in touch with Mr. Marcus.

23 But I understand that Ms. Kalisiak may still be on  
24 the line, and so I will open up the line for Ms. Kalisiak.

25 Ms. Kalisiak, can you hear me?

1 MS. KALISIAK: Yes, sir. Yes, sir. Thank you for --

2 THE COURT: Can you --

3 MS. KALISIAK: -- hearing us today or giving us an  
4 opportunity. I appreciate the work and efforts that you have  
5 been making on this.

6 Unfortunately, I am in tranches 1 and 2 and 4 and  
7 probably some others, but not one of the ones that received a  
8 payout, I guess, as I understand tranche 3 with maybe finally  
9 getting some -- a payout soon.

10 I think you said it best in your own words a short  
11 minute ago when you said it's been a long time coming, so --  
12 and I do appreciate that you're trying to conserve as much of  
13 our resources and expenses and make it as cost-effective as  
14 possible.

15 Unfortunately, I was also part of the STX Voyager  
16 thing in a completely different case. But we've already  
17 received a payout, like a third of what we're due. I think  
18 there's like another third of what we lost in that.

19 So, you know, I guess that's all I have to say today.  
20 It's continuing -- this -- you know, it's been going on for  
21 five years. It's continuing to have an -- this Ponzi scheme is  
22 continuing to have an impact on our daily lives. But we  
23 appreciate the efforts that you and the receiver are making in  
24 trying to bring this to justice.

25 THE COURT: Thank you. Could you just state your



1 name for the record, please?

2 MS. KALISIAK: Yes, sir. Susan Kalisiak.

3 THE COURT: Thank you. Thank you for calling in.

4 And I imagine your views are likely shared by others  
5 that it is a long time to wait. You have -- the payouts  
6 haven't happened for many of the claimants --

7 MS. KALISIAK: It is.

8 THE COURT: -- yet. And they are not going to be  
9 satisfactory. There is not enough money to go around to  
10 compensate everyone for the losses here.

11 So I appreciate your sentiments on that front as  
12 well. Thank you for calling in.

13 Let me now just go around the room and find out if  
14 there are any other issues that anyone wants to report to me.

15 Let me start with the SEC. Anything on the SEC's  
16 agenda?

17 MR. HANAUER: No. Thank you, Your Honor.

18 THE COURT: Mr. Stein, anything on your agenda for  
19 your clients?

20 MR. STEIN: No, Your Honor. Thank you.

21 THE COURT: And then I'll turn to other counsel  
22 present, if anyone would like to be heard.

23 (Counsel nod.)

24 THE COURT: Everyone is shaking their heads no, so  
25 that will be that.

1           We have schedules in place. We have proposed orders  
2           that need to be tweaked and finalized and then emailed to me,  
3           and we'll get those entered.

4           I think we should find a date at the -- I am pausing  
5           because, as I look at my 2024 calendar, it's full of trials.

6           So I am alerting everyone in this room to what looks  
7           to be where I will be occupied for lots of time in 2024. But I  
8           will also say that's what the calendar always looks like at the  
9           end of the year, about what the next year holds. But things  
10          often change. I think --

11          MR. RACHLIS: Your Honor, may I offer one suggestion?

12          THE COURT: Yes.

13          MR. RACHLIS: Because we have Groups 4 and 5 that  
14          will be initiated shortly, and we had indicated that our  
15          position statements would be out February 1st and then there  
16          was going to be this -- at least for Group 5, the February 15th  
17          date for identification of additional discovery, would some  
18          status date perhaps after that, in the latter part of February,  
19          the week of the 19th, be a good one?

20          I know I have a trial scheduled --

21          THE COURT: Understood. That is, in fact, what I was  
22          looking for, was after -- similar to how we have staged today's  
23          hearing, which is after the notice of --

24          MR. RACHLIS: Right.

25          THE COURT: -- discovery issues on the groups, that

1 we would reconvene.

2 I think we can do something -- let's try the last  
3 week of February. Actually, let's try Friday, March 1st.

4 Would that work for the receiver?

5 MR. RACHLIS: One of our team will be gone that day.

6 Would the 29th be -- well, the 29th, we have items  
7 that are due, but --

8 THE COURT: So if you can manage --

9 MR. RACHLIS: I --

10 THE COURT: -- let's try Friday, the 1st.

11 MR. RACHLIS: Yes, Your Honor.

12 THE COURT: And we would do that at 11:00 a.m.

13 MR. RACHLIS: That's fine.

14 THE COURT: Any counsel for interested claimants have  
15 any strong issue with that, that date or time?

16 (Counsel nod.)

17 THE COURT: People are shaking their heads no, so  
18 that's fine. Thank you. I appreciate that.

19 As that date approaches, if something happens and I  
20 need to make an adjustment, I'll try to give everyone as much  
21 notice as possible if I have to change that. But I know there  
22 are a lot of people's schedules that are in play whenever we  
23 try to convene a hearing, and I appreciate the effort that that  
24 takes.

25 So let's try Friday, March 1st at 11:00 a.m. for our

1 next status.

2 You can contact me if you need my help on settlement  
3 efforts. And I will encourage everyone to keep doing the work  
4 that you're doing as cost-effectively as you can, please.

5 Thank you.

6 MR. RACHLIS: Thank you, Your Honor.

7 (Proceedings concluded.)  
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C E R T I F I C A T E

I, Colleen M. Conway, do hereby certify that the foregoing is a complete, true, and accurate transcript of the Status Hearing proceedings had in the above-entitled case before the HONORABLE MANISH S. SHAH, one of the Judges of said Court, at Chicago, Illinois, on November 16, 2023.

/s/ Colleen M. Conway, CSR, RMR, CRR

12/01/2023

Official Court Reporter  
United States District Court  
Northern District of Illinois  
Eastern Division

Date